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105TH CONGRESS
2D SESSION**H. R. 4495**

To amend title XVIII of the Social Security Act to preserve access to home health services covered under the Medicare Program for the sickest and most frail beneficiaries, to permit continued participation by cost-effective providers, and to reduce opportunities for fraud and abuse.

IN THE HOUSE OF REPRESENTATIVES**AUGUST 6, 1998**

Mr. PETERSON of Pennsylvania introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title XVIII of the Social Security Act to preserve access to home health services covered under the Medicare Program for the sickest and most frail beneficiaries, to permit continued participation by cost-effective providers, and to reduce opportunities for fraud and abuse.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Medicare Beneficiary
5 Access to Home Care Act of 1998".

1 **SEC. 2. FINDINGS.**

2 Congress finds that the interim payment system for
3 home health services under medicare enacted as part of
4 the Balanced Budget Act of 1997 is having the following
5 unintended consequences:

6 (1) The sickest, most frail medicare bene-
7 ficiaries are losing access to medically necessary
8 home health services which are otherwise covered
9 under the medicare program.

10 (2) Many high-quality, cost-effective agencies
11 have had per beneficiary limits set so low that they
12 are finding it impossible to continue their participa-
13 tion in the medicare program.

14 (3) Many agencies are being subjected to aggre-
15 gate per beneficiary limits which do not accurately
16 reflect their current patient mix and make it impos-
17 sible for these agencies to compete with similarly sit-
18 uated agencies.

19 (4) Residents of certain States and regions of
20 the country are being afforded access to far fewer
21 home health services under medicare than residents
22 of certain other States or regions of the country who
23 have identical medical conditions.

24 (5) Under the surety bond requirements, high-
25 quality, law-abiding home health agencies which

1 have participated satisfactorily in the medicare pro-
2 gram for years are being excluded.

3 **SEC. 3. PAYMENTS TO HOME HEALTH AGENCIES UNDER**
4 **MEDICARE.**

5 (a) **RETROACTIVE RESTORATION OF PER VISIT COST**
6 **LIMIT TO 112 PERCENT OF THE MEAN OF COSTS.—**

7 (1) **IN GENERAL.**—Section 1861(v)(1)(L)(i) of
8 the Social Security Act (42 U.S.C. 1395x(v)(1)(L)(i)
9 is amended—

10 (A) in subclause (II), by adding at the end
11 “or”;

12 (B) in subclause (III)—

13 (i) by striking “and before October 1,
14 1997,”; and

15 (ii) by striking “, or” and inserting a
16 period; and

17 (C) by striking subclause (IV).

18 (2) **EFFECTIVE DATE.**—The amendments made
19 by paragraph (1) are effective as if included in the
20 enactment of the Balanced Budget Act of 1997
21 (Public Law 105–33).

22 (b) **REVISION OF INTERIM PAYMENT SYSTEM FOR**
23 **HOME HEALTH SERVICES.—**

24 (1) **RETROACTIVE REPEAL OF NEW PER BENE-**
25 **FICIARY LIMITS.—**

1 (A) IN GENERAL.—Clauses (v) through
2 (vii) of section 1861(v)(1)(L) of the Social Se-
3 curity Act (42 U.S.C. 1395x(v)(1)(L)) are re-
4 pealed

5 (B) EFFECTIVE DATE.—The repeal made
6 by subparagraph (A) is effective as if included
7 in the enactment of the Balanced Budget Act
8 of 1997 (Public Law 105–33).

9 (2) ESTABLISHMENT OF NEW LIMITS.—

10 (A) IN GENERAL.—Section 1861(v)(1)(L)
11 of the Social Security Act (42 U.S.C.
12 1395x(v)(1)(L)), as amended by paragraph
13 (1)(A), is amended by adding at the end the
14 following:

15 “(v)(I) For services furnished by home health agen-
16 cies for cost reporting periods beginning on or after Octo-
17 ber 1, 1998, the Secretary shall provide for an interim
18 system of limits. Payment shall not exceed the costs deter-
19 mined under the preceding provisions of this subpara-
20 graph or, if lower, an agency-specific, annual per bene-
21 ficiary limitation equal to the sum of the base amount de-
22 scribed in clause (vi) and the outlier amount described in
23 clause (vii).

24 “(II) Such limitations shall be prorated among agen-
25 cies for any beneficiary who receives covered home health

1 services from more than one agency under common owner-
2 ship or control for cost reporting periods beginning in a
3 fiscal year.

4 “(III) The Secretary shall establish such limitations
5 not later than October 1, 1998, for cost reporting periods
6 beginning during fiscal year 1999 and not later than Au-
7 gust 1 before the beginning of each succeeding fiscal year
8 for cost reporting periods beginning during such fiscal
9 year.

10 “(vi) The base amount described in this clause for
11 a cost reporting period is equal to the product of—

12 “(I) the amount of the reasonable costs (includ-
13 ing nonroutine medical supplies) of the standardized
14 average cost per unduplicated patient in fiscal year
15 1994 of providing services for the first 120 days
16 after home health services have commenced (as de-
17 termined under clause (viii), such costs updated by
18 the home health market basket index; and

19 “(II) the agency’s unduplicated census count of
20 base patients (entitled to benefits under this title)
21 for the cost reporting period subject to the limita-
22 tion, as determined under clause (ix).

23 “(vii) The outlier amount described in this clause for
24 a cost reporting period is equal to the product of—

1 “(I) subject to clause (viii)(III), the amount of
2 the reasonable costs (including nonroutine medical
3 supplies) of the standardized average cost per
4 unduplicated patient in fiscal year 1994 of providing
5 services for the more than 120 days after home
6 health services have commenced (as determined
7 under clause (viii), such costs updated by the home
8 health market basket index; and

9 “(II) the agency’s unduplicated census count of
10 outlier patients (entitled to benefits under this title)
11 for the cost reporting period subject to the limita-
12 tion, as determined under clause (ix).

13 “(viii)(I) The standardized average costs per
14 unduplicated patient described in clause (vi)(I) or (vii)(I)
15 shall be determined based upon an appropriate percentage
16 of a standardized average cost described in subclause (II).
17 For cost reporting periods beginning during fiscal year
18 1998, such appropriate percentages shall be 82 percent
19 and 110 percent, respectively.

20 “(II) The standardized average cost described in this
21 subclause is the reasonable costs (including nonroutine
22 medical supplies) of standardized average cost per
23 unduplicated patient in fiscal year 1994 of providing home
24 health services to any patient described in clause (vi)(I)
25 or (vii)(I), which are necessary for the efficient delivery

1 of needed services covered by the insurance programs es-
2 tablished under this title. Such standardized average cost
3 shall be determined, for a home health agency located in
4 a census division, based 50 percent on such average deter-
5 mined on a national basis for all agencies and 50 percent
6 on such average determined on a regional basis for all
7 agencies located in that census division.

8 “(III) In determining the amount described in clause
9 (vii)(I) in the case of a patient who may be counted in
10 the base patient count under clause (vi)(II) for a cost re-
11 porting period and who may also be counted in the outlier
12 patient count under clause (vii)(II) for the period, the
13 amount described in clause (vii)(II) with respect to that
14 patient shall be $\frac{2}{3}$ of the amount otherwise determined
15 under such clause.

16 “(ix)(I) For purposes of determining an agency’s
17 unduplicated census count of base patients for purposes
18 of clause (vi)(II) for a cost reporting period, an individual
19 who has been counted in the agency’s unduplicated census
20 count under such clause may not be counted again under
21 such clause during the same home health spell of illness.
22 For purposes of this clause, the term ‘home health spell
23 of illness’ has the meaning given such term in section
24 1861(tt)(2) except that such spell shall begin with the first
25 day (not included in a previous home health spell of ill-

1 ness) on which the individual is furnished any home health
 2 services for which benefits are available under this title
 3 and which occurs in a month for which the individual is
 4 entitled to benefits under either part A or part B.

5 “(II) No patient shall be included in the outlier cen-
 6 sus count under subclause (vi)(II) for a home health agen-
 7 cy unless the fiscal intermediary involved has determined
 8 that the patient meets the conditions for coverage of home
 9 health services beyond 120 days in a home health spell
 10 of illness. The Secretary shall establish a precertification
 11 process to ensure that such determinations are made in
 12 a timely manner that avoids interruptions in coverage for
 13 individuals who continuously meet such conditions of cov-
 14 erage. Such a determination that a patient does not meet
 15 such conditions is reviewable under section 1869(b) to the
 16 same extent as a claim for benefits involving \$1,000 or
 17 more in controversy.”.

18 (B) EFFECTIVE DATE.—The amendment
 19 made by subparagraph (A) applies to cost re-
 20 porting periods beginning on or after October 1,
 21 1998.

22 (C) TRANSITIONAL RULE FOR COUNTING
 23 CURRENT PATIENTS IN COUNT OF OUTLIER PA-
 24 TIENTS.—In the case of a patient who—

(i) is receiving covered home health services from a home health agency as of the first day of the first cost reporting period in which clause (v) of section 1861(v)(1)(L) of the Social Security Act (as added by paragraph (2)) applies to the agency, and

(ii) received such services from such agency for more than 120 days during a home health spell of illness (as defined for purposes of clause (ix) of such section, as so added),

the patient shall be counted in the count of outlier patients under clause (vii)(II) of such section and not in the count of base patients under clause (vi)(II) of such section.

(c) APPLICATION OF WAGE INDEX BASED ON LOCATION OF AGENCY.—

(1) IN GENERAL.—Section 1861(v)(1)(L)(iii) of such Act (42 U.S.C. 1395x(v)(1)(L)(iii)) is amended by inserting before the period at the end the following: “, or, in the case of limits established under clause (v), based upon the geographic area in which the agency is located”.

1 (2) EFFECTIVE DATE.—The amendment made
2 by paragraph (1) applies to cost reporting periods
3 beginning on or after October 1, 1998.

4 (d) LIMITATION ON APPLICATION OF FREEZE IN UP-
5 DATE TO PER VISIT LIMITS.—

6 (1) IN GENERAL.—Section 1861(v)(1)(L)(iv) of
7 such Act (42 U.S.C. 1395x(v)(1)(L)(iv)) is amended
8 by striking “under this subparagraph” and inserting
9 “under clause (i)”.

10 (2) EFFECTIVE DATE.—The amendment made
11 by paragraph (1) applies to cost reporting periods
12 beginning on or after October 1, 1998.

13 (e) ADJUSTMENT IN 15 PERCENT REDUCTION TO
14 ACHIEVE ORIGINAL CBO SPENDING TARGETS.—

15 (1) IN GENERAL.—Section 4603(e) of the Bal-
16 anced Budget Act of 1997 is amended by striking
17 “by 15 percent” and inserting before the period at
18 the end the following: “, by a percentage which is
19 sufficient to assure that total expenditures under
20 this title for benefits for home health services in
21 each of fiscal years 1999 through 2002 do not ex-
22 ceed the amount of such expenditures for such fiscal
23 year, as estimated by the Congressional Budget Of-
24 fice immediately before the date of the enactment of
25 this Act”.

1 (2) CONFORMING AMENDMENT TO PROSPEC-
2 TIVE PAYMENT SYSTEM.—Section 1895(b)(3)(A)(ii)
3 of the Social Security Act (42 U.S.C.
4 1395fff(b)(3)(A)(ii)) is amended by striking “by 15
5 percent” and inserting before the period at the end
6 the following: “, by a percentage which is sufficient
7 to assure that total expenditures under this title for
8 benefits for home health services in each of fiscal
9 years 1999 through 2002 do not exceed the amount
10 of such expenditures for such fiscal year, as esti-
11 mated by the Congressional Budget Office imme-
12 diately before the date of the enactment of this sec-
13 tion.”.

14 (3) EFFECTIVE DATE.—The amendments made
15 by this subsection apply to cost reporting periods be-
16 ginning on or after October 1, 1999.

17 (f) RESTORATION OF PERIODIC INTERIM PAYMENTS
18 FOR HOME HEALTH AGENCIES.—

19 (1) IN GENERAL.—Section 1815(e)(2) of the
20 Social Security Act (42 U.S.C. 1395g(e)(2)) is
21 amended—

22 (A) in subparagraph (C), by striking
23 “and” at the end;

24 (B) by redesignating subparagraph (D) as
25 subparagraph (E); and

1 (C) by inserting after subparagraph (C)
2 the following:

3 “(D) home health services; and”.

4 (2) EFFECTIVE DATE.—The amendments made
5 by paragraph (1) apply to payment for services fur-
6 nished on or after October 1, 1999.

7 **SEC. 4. EXTENSION OF HOME HEALTH PER EPISODE PRO-**
8 **SPECTIVE PAYMENT DEMONSTRATION**
9 **PROJECT.**

10 The Secretary of Health and Human Services shall
11 continue the home health per episode prospective payment
12 demonstration project authorized under section 4027 of
13 the Omnibus Budget Reconciliation Act of 1987 (42
14 U.S.C. 1395n note) until the prospective payment system
15 is established and implemented under section 1895 of the
16 Social Security Act (42 U.S.C. 1395fff). Any final report
17 otherwise required under section 4027 shall be due not
18 later than 6 months after the date such demonstration
19 project is completed.

20 **SEC. 5. REVISION OF SURETY BOND REQUIREMENT FOR**
21 **HOME HEALTH AGENCIES.**

22 (a) UNDER MEDICARE PROGRAM.—Section
23 1861(o)(7) of the Social Security Act (42 U.S.C.
24 1395x(o)(7)) is amended to read as follows:

1 “(7) provides the Secretary, prior to the initial
2 certification of the home health agency and for 1
3 year thereafter, with a surety bond against fraudu-
4 lent or abusive activities in a form specified by the
5 Secretary and in an amount equal to \$25,000; and”.

6 (b) UNDER MEDICAID PROGRAM.—Section
7 1903(i)(18) of such Act (42 U.S.C. 1396b(i)(18)) is
8 amended to read as follows:

9 “(18) with respect to any amount expended for
10 home health care services provided by an agency or
11 organization unless the agency or organization pro-
12 vides the State agency, prior to the initial certifi-
13 cation of the home health agency and for 1 year
14 thereafter, with a surety bond against fraudulent or
15 abusive activities in a form specified by the Sec-
16 retary under paragraph (7) of section 1861(o) and
17 in an amount equal to \$25,000 or such comparable
18 surety bond as the Secretary may permit under the
19 last sentence of such section.”.

20 (c) EFFECTIVE DATE.—The amendments made by
21 this section apply to services furnished on or after the date
22 of enactment of this Act.

1 SEC. 6. REQUIREMENT FOR FRAUD AND ABUSE COMPLI-
2 ANCE PROGRAM AS A CONDITION OF PAR-
3 TICIPATION FOR HOME HEALTH AGENCIES
4 UNDER THE MEDICARE PROGRAM.

5 (a) IN GENERAL.—Section 1891(a) of the Social Se-
6 curity Act (42 U.S.C. 1395bbb(a)) is amended by adding
7 at the end the following:

8 “(8) The agency has developed and imple-
9 mented a fraud and abuse compliance program.”.

10 (b) EFFECTIVE DATE.—The amendment made by
11 subsection (a) applies to services furnished on or after
12 such date as the Secretary of Health and Human Services
13 specifies in regulations promulgated to carry out such
14 amendment. The Secretary shall promulgate such regula-
15 tions as soon as practicable after the date of the enact-
16 ment of this Act.

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